

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

06-CR-400

ROBERT WALL,

Defendants.

THOMAS J. McAVOY
Senior United States District Judge

DECISION & ORDER

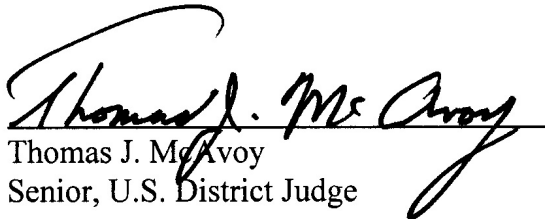
Defendant filed a motion pursuant to Fed. R. Crim. P. 12(b)(3) to dismiss the indictment and for other forms of relief. The Court rejects the motion, without prejudice to refiling, because Defendant's motion does not conform to N.D.N.Y.L.R. 10.1 that, among other things, requires papers to be double-spaced and consecutively numbered.

The Court will now address the remaining issue with respect to Defendant's motion pursuant to 28 U.S.C. § 2255. The Court previously found that a hearing was necessary to determine whether Defendant timely instructed his attorney to file an appeal. In lieu of a hearing, the government and defense counsel submitted a stipulation that, after the sentence was imposed on September 17, 2007, trial counsel did not again communicate with defendant until October 13, 2007, after the time to file a notice of appeal expired. The stipulation also provides that trial counsel did not request an extension of time in which to file an appeal. The government and defense counsel further stipulate that, based on these facts, defendant should be permitted to file a notice of appeal of his judgment of conviction.

For the foregoing reasons: (1) the motion pursuant to Fed. R. Crim. P. 12(b) is REJECTED WITH LEAVE TO RENEW UPON PROPERLY CONFORMING PAPERS; and (2) the motion pursuant to 28 U.S.C. § 2255 is GRANTED IN PART, insofar as the judgment of conviction is VACATED and the Clerk of the Court is directed to re-enter a judgment of conviction upon the same terms and conditions as the prior judgment of conviction. Upon re-entry of judgment, defendant shall have ten days in which to file a notice of appeal. Fed. R. App. P. 4(b). In all other respects, the motion pursuant to § 2255 is DENIED for the reasons stated in the Court's August 1, 2008 Decision and Order.

IT IS SO ORDERED.

Dated: July 20, 2009


Thomas J. McAvoy
Senior, U.S. District Judge